

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

Seth Baker, et al., ) No. 11-cv-00722-RSM  
v. )  
Plaintiffs, ) STIPULATION AND ORDER  
Microsoft Corporation, ) GRANTING PLAINTIFFS' MOTION  
Defendant. ) TO DISMISS WITH PREJUDICE

## **STIPULATION**

The parties, by and through their attorneys of record, stipulate to the Court's entry of the proposed Order set forth below, dismissing this case with prejudice, directing entry of judgment, and reserving questions of appealability. In support of this request, the parties represent the following:

1. Plaintiffs filed this action on April 28, 2011. *See* Dkt. 1.
  2. On March 27, 2012, the Court entered its Order on Defendant’s Motion to Strike Plaintiffs’ Class Allegations, granting Microsoft’s Motion to Strike. *See* Dkt. 32.
  3. On June 12, 2012, the United States Court of Appeals for the Ninth Circuit entered an Order “in its discretion, den[ying] the [Plaintiffs’] petition for permission to appeal the district court’s March 27, 2012 order.”

**STIPULATION AND ORDER GRANTING MOTION TO  
DISMISS WITH PREJUDICE (No. 11-cv-0722 RSM) -1**  
DWT 20443990v3 0025936-001400

**Davis Wright Tremaine LLP**  
LAW OFFICES  
Suite 2200 • 1201 Third Avenue  
Seattle, Washington 98101-3045  
(206) 622-3150 • Fax: (206) 757-7700

4. On September 25, 2012, Plaintiffs filed a Motion to Dismiss with Prejudice. See Dkt. 35. In that Motion, Plaintiffs explained that “[a]fter the Court has entered a final order and judgment, Plaintiffs intend to appeal the Court’s March 27, 2012 order (Dkt. 32) striking Plaintiffs’ class allegations.” *Id.*

5. Microsoft does not intend to oppose Plaintiffs' Motion to Dismiss because Fed. R. Civ. P. 41(a)(1)(A)(i) permits them to dismiss their case voluntarily. Microsoft does contend, however, that Plaintiffs will have no right to appeal the Court's Order striking Plaintiffs' class allegations after entry of their requested dismissal.

6. This Stipulation is not filed pursuant to a settlement agreement, nor was Plaintiffs' Motion to Dismiss filed pursuant to a settlement agreement. The parties have not entered into any settlement of Plaintiffs' claims.

7. Based on the foregoing, the parties stipulate and agree that the Court may enter the following Order dismissing this matter with prejudice, reserving to all parties their arguments as to the propriety of any appeal. Any arguments as to the propriety of an appeal shall be addressed in the United States Court of Appeals for the Ninth Circuit, if and when Plaintiffs file a notice of appeal.

Respectfully submitted this 16th day of October, 2012.

Davis Wright Tremaine LLP

By s/ Stephen M. Rummage  
Stephen M. Rummage, WSBA # 11168  
Fred B. Burnside, WSBA # 32491  
1201 Third Avenue, Suite 2200  
Seattle, Washington 98101-3045  
Telephone: (206) 757-8136  
Facsimile: (206) 757-7700

Charles B. Casper  
John Papianou  
Montgomery, McCracken, Walker & Rhoads, LLP  
123 S. Broad Street  
Philadelphia, PA 19109

*Attorneys for Microsoft Corporation*

**STIPULATION AND ORDER GRANTING MOTION TO  
DISMISS WITH PREJUDICE (No. 11-cv-0722 RSM) -2**

1 KELLER ROHRBACK LLP  
2

3 By s/Amy Williams-Derry  
4 Amy Williams-Derry, WSBA #28711  
5 Mark A. Griffin, WSBA #16296  
6 1201 Third Avenue, Suite 3200  
7 Seattle, WA 98101  
8 Telephone: (206) 623-1900

9 CHITWOOD HARLEY HARNES LLP  
10 Gregory E. Keller, WSBA #13040  
11 Darren T. Kaplan  
12 2300 Promenade II  
13 1230 Peachtree Street, N.E.  
14 Atlanta, Georgia 30309  
15 Telephone: (404) 873-3900

16 KOPELOWITZ OSTROW FERGUSON  
17 WEISELBERG KEECHL  
18 Jeffrey M. Ostrow  
19 200 S.W. 1st Avenue, 12th Floor  
20 Fort Lauderdale, FL 33301  
21 Telephone: (954) 525-4100

22 STRITMATTER KESSLER WHELAN  
23 COLUCCIO  
24 Paul L. Stritmater, WSBA # 4532  
25 Kevin Coluccio, WSBA # 16245  
26 Brad J. Moore, WSBA # 21802  
27 200 Second Avenue West  
Seattle, Washington 98119  
Telephone: (206) 448-1777

WASSERMAN COMDEN CASSELMAN &  
ESENSTEN LLP  
Melissa M. Harnett  
Gregory B. Scarlett  
5567 Reseda Blvd, Suite 330  
Tarzana, California 91356  
Telephone: (818) 705-6800  
Facsimile: (818) 996-8266

Attorneys for Plaintiffs

## ORDER

Based on the foregoing Stipulation, the Court GRANTS Plaintiffs' Motion to Dismiss with Prejudice, with all parties to bear their own costs and fees. The Court hereby directs the Clerk to enter Judgment accordingly and close this case.

IT IS SO ORDERED.

DATED this 16 day of October, 2012.

  
Ricardo S. Martinez  
United States District Judge

## Presented By:

Davis Wright Tremaine LLP  
Attorneys for Microsoft Corporation

By *s/ Stephen M. Rummage*  
Stephen M. Rummage, WSBA #11168  
Fred B. Burnside, WSBA # 32491  
1201 Third Avenue, Suite 2200  
Seattle, Washington 98101-3045  
Telephone: (206) 622-3150  
Fax: (206) 757-7700  
E-mail: [steverummage@dwt.com](mailto:steverummage@dwt.com)  
[fredburnside@dwt.com](mailto:fredburnside@dwt.com)